THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.9755 of 2006

05.1.2007

Between:

Abdullah Khan @ Babu Miyan, S/o.Ghouse Ali

... Petitioner

AND

The Chief Executive Officer, A.P.State Wakf Board, Hyderabad
And others

... Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.9755 of 2006

ORDER:

This writ petition is filed assailing the proceedings of the first respondent dated 01.4.2006 whereunder in purported exercise of powers under Section 54 of the Wakf Act, 1995 (the Act, for brevity), first respondent ordered eviction of the petitioner from the house bearing No.19-1-1050/1 (subject property), which is Wakf property belonging to Dargah Hazrat Mashiatullah Shah Quadri Mosque Graveyard situated at Dareecha Bawaheer, Hyderabad (hereafter called, the Dargah).

The petitioner claims to be owner of the subject property. He claims to have purchased the same from late Janab Mohammed Jaffaruddin under a notarized agreement of sale dated 11.2.1981. The first respondent issued a notice under subsection (1) of Section 54 of the Act calling upon the petitioner to show cause as to why he should not be evicted from the Wakf property belonging to Dargah. He submitted explanation allegedly contending that the subject property is not a Wakf property. After considering the same, first respondent passed impugned order, aggrieved by which the present writ petition is filed.

In the counter affidavit filed along with WVMP No.2364 of 2006, the Chief Executive Officer of the Wakf Board denies the allegations made in the affidavit accompanying the writ petition. It is stated that the petitioner is encroacher of Wakf property admeasuring 100 Sq.yards bearing MCH No.19-1-1050/1. It is also stated that the first respondent appointed Executive Officer of the Board as Enquiry Officer under Section 54(3) of the Act to ascertain genuineness of claim by the petitioner. During the enquiry, petitioner filed a statement before the Enquiry Officer to the effect that he occupied the subject property under an impression that he will be continued as watchman of the graveyard

and requested to treat him as a tenant. It is also alleged that the petitioner sent a representation expressing his willingness to become tenant of the Board. However, as the petitioner failed to deliver vacant possession after receiving the impugned order, the first respondent sent a requisition to the Revenue Divisional Officer, Hyderabad Division – second respondent herein; under Section 55 of the Act to take possession from the petitioner.

Learned Counsel for the petitioner submits that the petitioner is a genuine purchaser of the subject property from the third party and, therefore, he cannot be treated as an encroacher. According to the learned Counsel, procedure contemplated by the first respondent for eviction of the petitioner under Section 54 of the Act is itself improper. **Per contra**, learned Standing Counsel for the Wakf Board submits that the writ petition is not maintainable as the petitioner has effective remedy under Section 54 (4) of the Act, to seek redressal before the Wakf Tribunal against the order passed by the Executie Officer under Section 54(3) of the Act. Secondly, he submits that the petitioner gave a statement before the Enquiry Officer that it is Wakf property and that as he is willing to become tenant of the Wakf Board, he occupied the same. Learned Standing Counsel also produced relevant file before this Court.

Section 54 of the Act contemplates the procedure for removal of encroachment from the Wakf property. After receiving the complaint, the Chief Executive Officer shall have to issue a notice to encroacher calling upon him to show cause as to why an order requiring the person to remove the encroachment should not be made. If any objection is raised, considering the said objection, an order can be passed under Section 54(3) of the Act. The order passed under Section 54(3) of the Act is made appealable before the Wakf Tribunal, as per Section 54(34) of the Act. This legal position is not denied. Therefore, it would be better if the petitioner approaches the Wakf Tribunal and raise all questions. Liberty is given to the petitioner to do so, as in view of this legal position, it would not be proper for this Court to elaborately deal with other rival contentions. These issues can be decided by the Wakf Tribunal, after permitting the parties to produce necessary evidence.

The writ petition, with the above observations, is accordingly disposed of. No costs.

(**V.V.S.RAO,J**)

January 05, 2007.
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